

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

POLARIS IMAGES CORPORATION,

Plaintiff,

- against -

WARNER BROS. ENTERTAINMENT INC.,

Defendant.

Docket No. 1:18-cv-7362

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Polaris Images Corporation (“Polaris” or “Plaintiff”) by and through its undersigned counsel, as and for its complaint against Defendant Warner Bros. Entertainment Inc., (“Warner Bros.” or “Defendant”) hereby alleges as follows:

NATURE OF THE ACTION

1. This is an action for copyright infringement under Section 501 of the Copyright Act. This action arises out of Defendant’s unauthorized reproduction and public display of a copyrighted photograph of NFL football player Aaron Hernandez’s pregnant wife Shayanna Jenkins. Accordingly, Polaris seeks monetary relief under the Copyright Act of the United States, as amended, 17 U.S.C. § 101 *et seq.*

JURISDICTION AND VENUE

2. This claim arises under the Copyright Act, 17 U.S.C. § 101 *et seq.*, and this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

3. This Court has personal jurisdiction over Defendant because Defendant resides in and/or transacts business in New York.

4. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b).

PARTIES

5. Polaris is an independent photography agency that represents content owners around the world. Polaris has exclusive distribution relationships with some of its contributors. Polaris has a principle place of business at 259 W 30th Street, Suite 803, New York, NY 10001.

6. Upon information and belief, Warner Bros. is a foreign business corporation duly organized and existing under the laws of the State of Delaware, with a place of business at 1325 6th Avenue, #2500, New York, New York 10019. Upon information and belief Warner Bros. is registered with the New York Department of State Division of Corporations to do business in the State of New York. At all times material, hereto, Warner Bros. has owned and operated a website at the URL: <http://www.t TMZ.com> (the “Website”).

STATEMENT OF FACTS

A. Background of the Photograph

7. Enid Ricci, a professional photographer, who has an exclusive licensing agreement with Polaris, owns the copyright to the photograph of NFL football player Aaron Hernandez’s pregnant wife Shayanna Jenkins (the “Photograph”). A true and correct copy of the Photograph is attached hereto as Exhibit A.

8. Polaris is Enid Ricci’s exclusive licensing agent.

9. The Photograph was registered with the United States Copyright Office and was given registration number VA 2-104-176 and titled “5_22_2018 (280).jpg.” See Exhibit B.

B. Defendant’s Infringing Activities

10. On or about May 22, 2018, Warner Bros. ran an article on the Website titled *Aaron Hernandez’s Fiancé is Pregnant...But, Who’s the Dad?* See URL: <http://www.t TMZ.com/2018/05/22/aaron-hernandez-fiancee-pregnant-shayanna-jenkins/>. The

article prominently featured the Photograph. A true and correct copy of the article and a screen shot of the Photograph on the article are attached hereto as Exhibit C.

11. Warner Bros. did not license the Photograph from Plaintiff for its article, nor did Warner Bros. have Plaintiff's permission or consent to publish the Photograph on its Website.

12. Warner Bros. has a history of using Plaintiff's photographs without permission. In April 2018, Plaintiff filed a copyright infringement case against Warner Bros. for using another photograph without permission. See *Polaris Images Corporation v. Warner Bros. Entertainment, Inc.* 18-cv-3805-JMF.

CLAIM FOR RELIEF
(COPYRIGHT INFRINGEMENT AGAINST WARNER BROS.)
(17 U.S.C. §§ 106, 501)

13. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1-12 above.

14. Warner Bros. infringed Plaintiff's copyright in the Photograph by reproducing and publicly displaying the Photograph on the Website. Warner Bros. is not, and has never been, licensed or otherwise authorized to reproduce, publically display, distribute and/or use the Photograph.

15. The acts of Defendant complained of herein constitute infringement of Plaintiff's copyright and exclusive rights under copyright in violation of Sections 106 and 501 of the Copyright Act, 17 U.S.C. §§ 106 and 501.

16. Upon information and belief, the foregoing acts of infringement by Defendant have been willful, intentional, and purposeful, in disregard of and indifference to Plaintiff's rights.

17. As a direct and proximate cause of the infringement by the Defendant of Plaintiff's copyright and exclusive rights under copyright, Plaintiff is entitled to damages and Defendant's profits pursuant to 17 U.S.C. § 504(b) for the infringement.

18. Alternatively, Plaintiff is entitled to statutory damages up to \$150,000 per work infringed for Defendant's willful infringement of the Photograph, pursuant to 17 U.S.C. § 504(c).

19. Plaintiff further is entitled to its attorney's fees and full costs pursuant to 17 U.S.C. § 505.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests judgment as follows:

1. That Defendant Warner Bros. be adjudged to have infringed upon Plaintiff's copyrights in the Photograph in violation of 17 U.S.C §§ 106 and 501;
2. The Defendant Warner Bros. be adjudged to have falsified, removed and/or altered copyright management information in violation of 17 U.S.C. § 1202.
3. That Plaintiff be awarded either: a) Plaintiff's actual damages and Defendant's profits, gains or advantages of any kind attributable to Defendant's infringement of Plaintiff's Photograph; or b) alternatively, statutory damages of up to \$150,000 per copyrighted work infringed pursuant to 17 U.S.C. § 504;
4. That Defendant be required to account for all profits, income, receipts, or other benefits derived by Defendant as a result of its unlawful conduct;
5. That Plaintiff be awarded its costs, expenses and attorneys' fees pursuant to 17 U.S.C. § 505;
6. That Plaintiff be awarded pre-judgment interest; and
7. Such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues so triable in accordance with Federal Rule of Civil Procedure 38(b).

Dated: Valley Stream, New York
August 15, 2018

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